86-698

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

NIA J. IMANI, on
behalf of TERRON HAYES,

Petitioner

v.

MARGARET HECKLER,
Secretary of the
Department of Health
and Human Services,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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133PP

QUESTIONS PRESENTED FOR REVIEW

1. Were the Respondent's findings that the Petitioner is not entitled to survivor's benefits for her child supported by substantial evidence?

2. Did the Administrative Law Judge act arbitrarily and without discretion or criteria in denying those benefits?

3. Did United States District Court and the United States Court of Appeals, after their correction of the error of the Administrative Law Judge of the Social Security Administration regarding the possible time of conception, and natural conflicts in testimony attributable to human forgetfullness, thereupon fail to consider the effect of those errors in the ALJ's determination that such evidence indicated that the wage earner was not the father and in creating doubt in the

Administrative Law Judge regarding the Petitioner's credibility?

4. Did the Administrative Law Judge apply erroneous or inappropriate standards in determining that the child is not the child of the wage earner?

5. Did the Wage earner's contribution to the Petitioner and her unborn child constitute "contributing to the support" of the child?

PARTIES IN THE UNITED STATES COURT OF APPEALS

The Respondent Margaret Heckler, sub. nom., was formerly Secretary of the United States Department of Health and Human Services. Since the origination of this appeal, the Respondent has been succeeded in office by Dr. Otis Bowen, who is automatically substituted as Respondent.

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No.

IN THE
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The Petitioner, Nia J. Imani, on behalf of Terron Hayes, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United

States Court of Appeals for the Seventh Circuit, entered in this proceeding on July 31, 1986.

REPORTS AND OPINIONS

The Administrative Law Judge for the Social Security Administration entered his Findings and Discussion under the deceased wage earner's Social Security Number, namely 495-56-0337, on June 17, 1983, denying survivor's benefits to the Petitioner Imani's son. The Appeals Council of the Department of Health and Human Services determined on September 19, 1983, that no basis existed for review, under its reference number SGC 495-56-0337. The United States District Court, Southern District of Indiana, Indianapolis Division, by Judge William E. Steckler, adopted the Entry and Judgment of its Magistrate on February 8, 1985, under

Cause No. IP83-1820-C and affirmed the decision of the Secretary through the Administrative Law Judge. The United States Court of Appeals for the Seventh Circuit, under Case Number 85-1334, affirmed the District Court on July 31, 1986.

JURISDICTIONAL STATEMENT

The nature of the case is the denial of survivor's benefits to the Petitioner Imani for her son, Terron Hayes, under the Social Security Act. The Defendant in this action is, sub. nom., an agency of the United States of America, and jurisdiction in the United States Supreme Court is pursuant to 28 U.S.C. §1254. Appeal in the United States Courts of Appeal was pursuant to 42 U.S.C. §1291, after jurisdiction was established in the United States District Court by 42 U.S.C. §405(g). The United States Court of

Appeals entered judgment on July 31, 1986, and Notice of Appeal was filed in United States Court of Appeals for the Seventh Circuit, and the United States District Court, Southern District of Indiana, Indianapolis Division, on September 19, 1986. The Plaintiff's counsel has entered her appearance with the United States Supreme Court and has paid the required filing fee to the Clerk of the Supreme Court.

STATUTES INVOLVED

This case involves (1) whether the ALJ's decision was based upon substantial evidence as required by 42 U.S.C. §405(g); (2) whether the ALJ employed an erroneous interpretation of the Missouri standard of paternity as required by Missouri Annotated Statutes, §474.060; (3) whether Imani's evidence should have been

"satisfactory to the secretary" pursuant to 42 U.S.C. §416(h)(2)(A) and (h)(3)(C)(ii); and (4) whether Imani sustained the burden of proof required by 42 U.S.C. §416(h)(2)(A) and (h)(3)(C)(ii). All of said statutory provisions are set out in the Appendix hereto.

STATEMENT OF THE CASE

The Plaintiff-Appellant, Nia J. Imani (formerly Ramona Hayes), is the mother of a son, Terron Hayes, born June 4, 1973, thirty (30) weeks after the death of the wage earner, Terry Williams.

Imani filed her Application for Surviving Child's Insurance Benefits pursuant to 42 U.S.C. §402(d)(1)(C)(ii) with the Social Security Administration on November 22, 1976, for Terron, and the claim was first disapproved on February 18, 1977, at the administrative

level. On March 18, 1977, she filed a Request for Reconsideration, which was reconsidered and denied on September 26, 1978. Upon a request for a hearing on reconsideration, an Administrative Law Judge of the Offices of Hearings and Appeals of the Department of Health, Education, and Welfare, Social Security Division, entered his decision denying those benefits on March 6, 1979. Because of a decision in a non related case, Imani was notified that she was eligible to reapply for reconsideration and did so, and following a hearing on August 11, 1982, before a second Administrative Law Judge, Arthur G. Lanker (ALJ), the ALJ on behalf of the Social Security Administration, entered his findings and decision on June 17, 1983, affirming again that Terron was not entitled to survivor's benefits on the record of the wage

earner, Williams, in that Terron is not the "child" of the wagearner under either Missouri or federal standards, and that the wage earner was not contributing to the support of the child.

Imani gave notice to the Appeals Council of the Office of Hearings and Appeals of the Social Security Administration and for Request for Review by said Council, which request was denied on September 19, 1984.

Imani thereafter filed for review in the United States District Court, Southern District of Indiana, Indianapolis Division, under Cause Number IP83-1820-C, seeking a determination of whether the ALJ's decision had been supported by substantial evidence, and United States Magistrate J. Patrick Endsley of the United States District Court delivered his Notice of Filing Magistrate's Report or

Review, Recommendation, Proposed Memorandum and Decision and Judgment thereon to the Honorable Judge William E. Steckler of the United States District Court on December 12, 1984. Over Imani's objections to Entry of Judgment, the Honorable Judge Steckler adopted the Entry and Judgment on February 8, 1985. Imani thereafter timely filed an appeal of the findings of the District Court and of the Administrative Law Judge of the Department of Health and Human Services, Social Security Division, and the United States Court of Appeals for the Seventh Circuit thereupon issued Findings affirming the District Court on July 31, 1986.

. . .

The facts as presented to the ALJ included that Terron Hayes was born on June 4, 1973, in St. Louis, Missouri. Imani had first met the deceased wage

earner, Terry Williams, at the home of a friend, Wanda Stapleton Coates (no relation), in Columbia, Missouri, in August, 1972, after she completed a college preparation program in Jefferson City, Missouri. About three (3) weeks later, but still in August, or early September, 1972, Williams and Imani began a romantic and sexual relationship which continued until briefly before the time of Williams's death on November 4, 1972. Imani testified that she had no sexual relationship with any other person prior to her pregnancy, which she first began to suspect in October, 1972. Imani's sister, Danese Williams (no relation to the wage earner), reported to the Social Security Administration that she became aware that to her personal knowledge Imani and Williams were having a relationship from August 21, 1972, until approximately two

(2) weeks before Williams's death, including various meetings and overnight stays at Danese's home during that time.

In October, 1972, Imani notified Williams that she believed that she was pregnant, and Williams delivered ten dollars ($10.00) to Imani for a pregnancy test, which proved to be inconclusive, and for a positive test on November 3, 1972.

Williams was brutally and unexplainably murdered in Missouri on November 4, 1972, while a resident of Missouri, but prior to his death, he had informed his mother, Dora O. Williams, and another friend that he was to be a father and needed to obtain employment, as attested by the statement of Dora O. Williams.

Terron weighed approximately six (6) pounds at birth, and was a full-term baby. A birthdate of June 4, 1973, would follow

naturally from conception in late August or September of the prior year, as calculated by the District Court of Appeals and the United States Court of Appeals for the Seventh Circuit. The hospital admission records had carelessly indicated that the "onset of the illness" was August, 1972, leading the ALJ to establish an impossible conception in August.

The child was born in Columbus, Missouri, and is accepted as a grandchild by Dora O. Williams. Too much so, to Imani's satisfaction, she said. In fact, the parents of Terry Williams thereafter filed a legal action in Missouri to have Terron Hayes's name changed to Terron Williams, and Imani left Missouri because of their possessiveness.

In addition the evidence provided by Imani at the hearing that she and the

deceased wage earner Williams had engaged in sexual relations for the month prior to, during, and after conception, which she believes to be September, and that she had sexual relations with no other man, she presented evidence that the blood types of Williams, Imani, and Terron are consistent and that they did not exclude the wage earner as a father, and that Terron bears a striking physical resemblance to Williams. In addition, Williams told his mother that he was to be a father, needed to find a job, and had given Imani ten dollars ($10.00) for a pregnancy test, the only sum required of him by her prior to his death after she began to suspect that she was pregnant, and had contributed food and spending money to her throughout their relationship.

The Department of Health and Human Services provided no evidence whatsoever, but after considering Imani's evidence, the ALJ made the following specific findings on June 17, 1983:

> 1. Terron Hayes is not the "child" of the wagearner under Missouri State Law as required by §216(h)(2)(A) of the Social Security Act.
>
> 2. Terron Hayes is not the "child" of the wagearner pursuant to §216(h)(2)(B) of the Social Security Act as his mother and the wagearner never went through a marriage ceremony.
>
> 3. Terron Hayes is not the "child" of the wagearner pursuant to §216(h)(3)(c) of the Social Security Act as the evidence of record does not establish that the wagearner was ever decreed by a court to be his father, was ever ordered by court to contribute to his support, or ever acknowledged him in writing. Furthermore, the evidence of record does not establish that the wagearner was his biological father or that the wagearner was either living with him or contributing to his support at the time of his death (Appendix 79-81a).

In arriving at those Findings, the ALJ stated as follows:

> In sum, there is evidence which tends to show that the decedent is the father of Terron: 1. The child's name is Terron Lamont, decedent's was Terry Lamont; 2. The decedent's parents have repeatedly conducted themselves in a manner showing their belief that the decedent is the father; 3. The blood types are consistent with the alleged parentage; 4. The Claimant has declared that she has had no other sexual contact, had sexual contact with the decedent, and "knows" that he is the father.
>
> Conversely, there is evidence which tends to show that the decedent is not the father of Terron: 1. The time table comes close to ruling out sexual contact with the decedent during the crucial month of August 1972 when in all liklehood Terron Hayes was conceived; 2. The deceased was never unequivocally informed that he was the father, and others to whom he allegedly declared his parentage, have not made statements supportive of these claims; 3. The blood types are consistent with other types of parentage; 4. There are serious conflicts in the evidence on important details; a the claimant's sister stated

> that sexual contacts occurred in her house, whereas the claimant placed them initially at a friend's home, Wanda Stapleton Coats-and there is no statement from Wanda Stapleton; b. The claimant initially claimed that the decedent gave her money for two doctor bills, whereas at the hearing she said that the decedent sent $10.00 through (she believed) Wanda Stapleton, and that she was not charged in fact for either visit.
>
> It is accordingly found, that while there is evidence tending to show paternity, it is not clear and convincing thereof. Therefore, the Claimant has not proved that the wage earner was the father under the law of the State of Missouri which requires that the evidence be clear and convincing. Nor has the Claimant proved that the child meets §216(h)(3)(c) of the Act, since she has not proven any of the requisite facts relevant thereto. (Appendix 77-79a).

The ALJ made no specific finding regarding Imani's credibility, or that of any of the persons who submitted written statements to the secretary. However, the ALJ applied faulty mathematics in determining both that conception

necessarily occurred in August (corrected by the District Court and the Court of Appeals) and that the pregnancy lasted ten (10) months, and since Imani testified that her sexual relationship with Williams began in late August or early September, the ALJ was obviously suspicious. The ALJ also erroneously stated that Imani went to Columbia, Missouri, in late August, instead of early August, as stated in the transcript. Simple mathematics and common knowledge place conception in either very late August or September, 1972. The United States District Court and the United States Court of Appeals for the Seventh Circuit concluded that conception would have taken place in late August or September, 1972, directly during the period in which Imani and Williams were engaging in regular and exclusive sexual intercourse, and attested by a third party.

After having made the faulty calculation, the ALJ was impressed by what he considered the inconsistencies in Imani's testimony, such as the difference of a year in Williams's age, his prior branch of service, and the location of the sexual contacts. The case then was determined upon no other evidence that the ALJ's unspoken feelings about Imani's credibility.

Imani's appeal to the United States Supreme Court is based upon her belief that the evidence which she presented to the ALJ was clear and convincing to establish paternity in Williams pursuant to Missouri Law, namely Missouri Annotated Statutes §474.060 (Vernon). She also believes that the evidence which she presented to the ALJ showed that Williams did provide all of the financial support required by the embryo, and that it was

reasonable in light of his unemployed status, and that the evidence should have been satisfactory to show the Secretary that Williams is the father of Terron, and that the ALJ's decision is not supported by substantial evidence, and that the small amounts of money which Williams gave Imani established his contribution of all necessary support.

In challenging the ALJ's lack of substantial evidence, Imani first raised the issues of the date of conception, the understandable inconsistencies in Imani's testimony, and the sufficiency of William's contributions of support in her Brief in Support of her Request for Review from the Appeals Council. She brought the same issues to the attention of the United States District Court, Southern District of Indiana, Indianapolis Division, by her Brief in Support of Plaintiff's Complaint

challenging the ALJ's lack of substantial evidence, including her contentions regarding the error in the ALJ's establishment of date of conception, the ALJ's application of an inappropriate standard of determination under Missouri and federal standards, and the "regular and substantial" test of determination of support, and in general that the ALJ's determination was not supported by substantial evidence, that the standard of "evidence satisfactory to the Secretary" endows the Secretary with unbridled discretion that is not reasonable, and that the ALJ's determination is contrary to the purposes of the Social Security Act. The issues presented for review to the United States Court of Appeals for the Seventh Circuit by the Brief of Plaintiff-Appellant Imani also included whether the District Court erred in

applying an inappropriate, unreasonable, and unconstitutional standard in determining that Terron Hayes is not entitled to benefits, whether the District Court entered erroneous findings affirming those of the ALJ that the child is not the "child" of the wage earner and whether the present standards determinative of paternity under the Act constitute a denial of due process of law to the child, and arguing again the issues of date of conception, lack of contradictory evidence, and that Imani had provided evidence that should be considered "clear and convincing" under Missouri statutes, and "satisfactory to the secretary" under federal standards, that Williams did provide all necessary support for the child, and generally that the ALJ's decision was not supported by substantial evidence, and that the standard of

"evidence satisfactory to the secretary" could mean that the secretary has unbridled discretion to determine what evidence is sufficient to establish paternity, and that the secretary's standards as applied are not rationally related to the remedial and humanitarian goals of the Social Security Act. All of the questions have been addressed and supplied to this Court as final decisions by the United States District Court and the United States Court of Appeals.

REASONS FOR ALLOWANCE OF THE WRIT

I.

The Respondent-Secretary's findings were not supported by substantial evidence and the Secretary acted arbitrarily and without discretion.

The AlJ's Findings of Fact clearly indicated an erroneous timetable contrary

to the evidence. Imani met Williams in August, 1972, having just returned from a school program. A sexual relationship commenced three (3) weeks later, first at a friend's home and then at her sister's. Her sister placed the later dates as having begun on August 21, 1972:

> I, Danese Williams, of 1801 West Worley, Columbia, Missouri, being above the age of consent and making the following statement to the best of my ability.
>
> I knew Terry and Ramona Hayes very well and I knew that they were going together from August 21 through November 4, the date of Terry Williams' death.
>
> I knew that their relationship was steady and regular because they met at my home daily during the time of August 21 to September 30, at which time they often stayed the night.
>
> I also say Terry Williams give Ramona Hayes money and he sometimes bought food for both of them to eat at my home (R. at 53).

The ALJ, however, obviously had misread Danese Williams's statement and states:

> Of course, if the claimant's sister, Danese Williams, is correct in Exhibit 22, that Terry Williams and the claimant were "going together from August 21" and if claimant is correct that the two had not started having sex until about three weeks after they met, it would have been impossible for the baby to have been conceived in August 1972, at least conceived insofar as the wage earner was concerned (Appendix at 74-5).

Having begun with a false premise, the ALJ then further determined that a June 4, 1973, delivery would follow from an August, 1972, conception, thereby establishing an extraordinary ten (10) month period of gestation, and further compounding the error. He specifically referred to the time factors in finding that "the time table comes close to ruling out sexual contact with the

decedent during the crucial month of August 1972 when in likelehood [sic.] Terron Hayes was conceived. . . (Appendix at 77a).

The United States District Court and the Court of Appeals for the Seventh Circuit applied corrected dates for the beinning of both the relationship (August), the sexual acts (August and September) and the time of conception (late August or September).

The bare record before the District Court and the Court of Appeals should have been adequate to show that the ALJ was making illogical presumptions not based upon the record. Both Courts inferred that since the Secretary provided no evidence to the contrary, the ALJ's findings must have been based upon his credibility determination. The ALJ was therefore acting arbitrarily and

without discretion, which he has no right to do. Mendoza v. Secretary, 655 F.2d 10 (1st Cir. 1981). Under 42 U.S.C. §405(g) the findings of the Secretary (by and through the ALJ) are conclusive if they are supported by "substantial evidence." Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389, 401, 91 S.Ct. 1420, 1429 (1971); Schmoll v. Harris, 636 F.2d 1146, 1150 (7th Cir. 1980).

II.

As a result of having made erroneous findings of fact, the ALJ then inferred that certain harmless inconsistencies were probative of Imani's credibility.

The next logical step for the District Court and the Court of Appeals was that the ALJ's objectivity was colored by his erroneous and prejudicial

disbelief of Imani's evidence, based upon his erroneous findings of fact. He found:

> 4. There are serious conflicts in the evidence on important details; a the claimant's sister stated the sexual contacts occurred at her house, whereas the claimant placed them initially at a friend's home, Wanda Stapleton Coats [sic.]--and there is no statement from Wanda Stapleton; b. the claimant intially claimed that the decedent gave her money for two doctor bills, whereas at the hearing she said the decedent sent $10.00 through (she believed) Wanda Stapleton, and that she was not charged for either visit. (Appendix at 77a)

Those inconsistencies were given very little weight by the Court of Appeals which said: "Unless the ALJ's assessment of the witnesses is patently wrong in view of the cold record before us, it must stand." (Appendix at 8a). The ALJ <u>was</u> patently wrong because his own error had poisoned his mind and he

was then unable to act without being arbitrary and to act with discretion.

III.

The evidence which Imani presented was adequate to prove paternity under Missouri law and the Secretary's standards.

42 U.S.C. §416(h)(2)(A) directs that under the present facts, Missouri's 1982 law of intestate devolution shall apply. The "clear and convincing" standard for determining paternity under the Missouri revised statute §474.060(2) is a severe and heavy burden. Estate of Pope v. Hook, 670 S.W.2d 943 (Mo. App. 1984). See Gray v. Richardson, 474 F.2d 1370 (6th Cir. 1973) and Owens v. Schweiker, 692 F.2d 80 (9th Cir. 1982). "Clear and convincing proof" has been defined in the context of establishing illegitimacy (not paternity) is that which "bears no room

for doubt and as requiring a quantum of evidence such that no conclusion other than that of illegitimacy can be recalled." B.S.H. v. J.J.H., 613 S.W.2d 453, 457 (Mo. App. 1981). However, the "clear and convincing" burden for determining paternity is less severe.

With the exception of his unsupported opinion regarding credibility, the ALJ had no other reason to determine that Imani had not met the Missouri test. The Court of Appeals neatly skirted the Missouri question by addressing itself solely to credibility.

If the Missouri test does in fact fail, Imani must then pass the Secretary's test set out in 42 U.S.C. §416(h)(3)(C)(ii), namely "evidence satisfactory to the Secretary," that Terron was fathered by Williams. Imani has raised the issue that

§416(h)(3)(C)(ii) endows the Secretary with "unbridled discretion." Hernandez v. Weinberger, 493 F.2d 1120 (1st Cir. 1974). The Secretary's rules must be reasonable (42 U.S.C. §405(a)), and the Secretary may not act arbitrarily and without criteria. See Appalachian Power Co. v. Environmental Protective Agency, 477 F.2d 495, 507 (4th Cir. 1973).

The case at hand is strikingly similar to Mendoza v. Secretary, supra., when the Court of Appeals for the First Circuit determined that evidence was not substantial for support of the ALJ's findings:

> Reviewing the record, we are struck by the sheer quantity of the evidence supporting claimant's position that Rivera was the father, and the paucity of any evidence to the contrary. We are also struck by the absence of any guideline or rule of the secretary, relative to cases of this sort, which might serve as a basis for disconnecting any or all of claimant's proof. Finally, we

> are struck by the absence of any stated reason by the Administrative Law Judge for discrediting claimant's witnesses--indeed, the Administrative Law Judge nowhere said that he discredited claimant's evidence, leaving us puzzled as to why he decided as he did. Mendoza, supra. at 14.

However, again the Court of Appeals avoided addressing the issue of the Secretary's abuse of discretion by leaping to the final requirement of the federal standard, namely whether Williams was "living with or contributing to" the support of Terron at the time of his death as required by §416(h)(3)(C)(ii).

IV.

The sums of money which Williams gave to Imani were adequate to constitute his contributions to Terron's support for the purpose of the Act.

The final hurdle to be crossed is whether Williams actually met the

requirement of support set out in 42 U.S.C. §416(h)(3)(C)(ii). Imani was probably about two (2) months pregnant when Williams was killed. The needs of the embryo at that time were totally met by the natural functions of the mother's body, and the attention and support conferred upon the mother inures to the benefit of the unborn child. See Schaefer v. Heckler, 792 F.2d 81, 85-7 (7th Cir. 1986). The Schaefer case is directed specifically to children born after or shortly before the alleged father's death, not thirty (30) weeks later as in the instant case. However, the Court must consider whether the contributions were commensurate with the needs of the unborn child. Doran v. Schweiker, 681 F.2d 605, 607 (9th Cir. 1982). The Court of Appeals for the Seventh Circuit erroneously states that

the Schaefer case is controlling, but it simply cannot be applied to a pregnancy of two (2) months' duration where virtually no financial support was necessary. It is not necessary, as the Court of Appeals states, that Williams was supporting Imani--he must be supporting the claimant, namely Terron. Williams gave ten dollars ($10.00) to Imani--the only expenditures required by her pregnancy prior to Williams' death, and provided her with food from time to time before he actually knew that she carried his child.

The Court of Appeals erroneously determined that there was "no statement in the record that he [Williams] was unable to provide the funds; the clear implication was that he simply did not want to." (Appendix at 10a). The record actually stated clearly that Williams had

left the Armed Forces and was unemployed, and that his contributions must therefore be considered in the light of his ability to pay. The requirement that support of the unborn child be "regular and continuous" is purposeless. Doran v. Schweiker, supra. at 660, citing Adams v. Weinberger, 521 F.2d 656 (2nd Cir. 1975).

> Obviously, continuous, regular, and substantial contributions is a just standard when the wage earner's income is regular and substantial. But when the income of a wage earner lacks continuity and substantiality and contributions are nevertheless given, a different criterion should be applied. When a wage earner is poor and earns an irregular income, it is ludicrous to require regular and substantial payments to his children born out of wedlock or not. The wage earner is barely supporting himself. Boyland v. Califano, 633 F.2d 430, 434 (6th Cir. 1980).

(See also Jones v. Harris, 629 F.2d 331, 336 (4th Cir. 1980), stating that a strict application of the Secretary's

test directly contravenes the purposes of the Act).

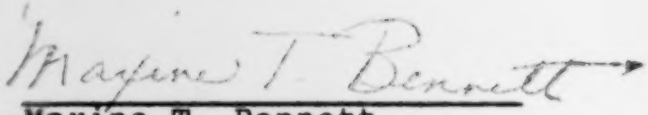
Williams's contributions met the test of support in that they were commensurate with the child's needs and Williams's ability to pay. The Secretary's test, as applied in the instant case, is not rationally related to the Social Security's remedial goals--to provide support anticipated from a lost parent. Jiminez v. Weinberger, 417 U.S. 628, 634, 94 S.Ct. 2496, 2500, 41 L.Ed.2d 363 (1974).

CONCLUSION

Imani's claim for Terron must be judged based upon the facts in the record, not upon the ALJ's prejudice, invoked by his misunderstanding of the facts, and the application of erroneous standards. For the reasons stated, a

writ of certiorari should issue to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,



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APPENDIX

Opinion of the Court Below

In the

United States Court of Appeals

For the Seventh Circuit

No. 85-1334

NIA J. IMANI, on behalf of TERRON HAYES,

Plaintiff-Appellant,

v.

MARGARET HECKLER, Secretary, Department of Health and Human Services,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
No. 83 C 1820—William E. Steckler, *Judge.*

ARGUED OCTOBER 25, 1985—DECIDED JULY 31, 1986

Before BAUER, WOOD, and ESCHBACH, *Circuit Judges.*

ESCHBACH, *Circuit Judge.* The primary question presented in this appeal is whether the district court erred in affirming the decision of the Secretary of the Department of Health and Human Services denying Terron Hayes surviving child's benefits under the Social Security Act. For the reasons stated below, we will affirm.

I

Nia J. Imani, also known as Ramona D. Hayes, filed an "Application for Surviving Child's Insurance Benefits" with the Department of Health and Human Services ("De-

partment") on November 22, 1976, on behalf of her son, Terron Hayes. Imani claimed that Terron was the child of Terry Williams, the deceased wage earner, who died insured on November 4, 1972. After the Department denied her claim on March 18, 1977, she filed a "Request for Reconsideration," which was denied on September 26, 1978. In response to Imani's timely request, a hearing was held before an Administrative Law Judge ("ALJ") on December 18, 1978. Imani, who was represented by counsel, appeared and testified in support of her claim. In a decision dated March 6, 1979, the ALJ concluded that Terron was not entitled to surviving child's insurance benefits on the social-security record of Terry Williams.

Pursuant to a court order in an unrelated case, the Department reexamined Imani's original application and once again denied it in a notice dated April 14, 1982. Upon Imani's request for reconsideration, the claim was again denied on June 21, 1982. Imani then sought another hearing before an ALJ, which was held on February 7, 1983. Imani, once again represented by counsel, appeared and testified in support of her application for Terron. The evidence adduced at that proceeding may be outlined as follows:

Imani, then 17 years old, attended from May or June of 1972 to August of 1972, a college preparatory course in Jefferson City, Missouri. She testified that she had no sexual relations during that time. At the conclusion of the course, she returned to her parents' home in Columbia, Missouri. Within a week of Imani's return, Wanda Stapleton, a cousin and friend, introduced her to the wage earner, Terry Williams, then 21 years old. After two or three weeks, the relationship between Imani and Williams "sped up," and they would meet and engage in sexual intercourse at the residence either of Ms. Stapleton or of Danese Williams. The latter was Imani's sister and unrelated to Terry Williams. Imani testifies that she did not recall how many times she had sex with Williams, but eventually suggested that the number was either five or six. Their final liaison occurred on approximately October

21, 1972. Imani and Williams had a dispute at that time, because he would not take her to a movie, and she did not see him again before he was murdered on November 4, 1972.

Imani testified that she thought she might be pregnant in late October of 1972 and that, after a preliminary examination at a clinic, she called Williams two weeks before his death to discuss the matter with him. She underwent a second examination and was informed on November 3, 1972, that she was in fact pregnant. She was unable, however, to relate that information to Williams before he was shot to death on the following day. Imani claimed, nonetheless, that Williams "knew" he was the father. She also offered hearsay evidence in an attempt to prove that Williams had acknowledged to others that he would be a father. She could not, however, show that Williams was regularly providing her with funds, although he did occasionally purchase some beer and food for their dates. Nonetheless, she claimed that he gave Wanda Stapleton $10 to give to Imani to cover the costs of a pregnancy test.

Terron Hayes was born on June 4, 1973, in Columbia, Missouri. The pregnancy was full-term, so that conception probably occurred in late August or early September of 1972. A comparison of the blood types of Imani and Williams does not exclude paternity, but also cannot conclusively determine it, because approximately 30% of the black males in the United States could have fathered a child with Terron's blood type. Imani offered evidence concerning the statements and actions of third parties to support her claim that Williams was the father. She also produced photographs in an attempt to demonstrate a striking resemblance between her son and Williams. The ALJ, however, was not persuaded by the pictures, and Imani subsequently stated that Terron resembled both of his parents.

In an exhaustive order dated June 17, 1983, the ALJ found that the child was not entitled to the benefits sought in the application filed in November of 1976. In support of this conclusion, he made the following findings:

1. Terron Hayes is not the "child" of the wage earner under Missouri State law as required by Section 216(h)(2)(A) of the Social Security Act.

2. Terron Hayes is not the "child" of the wage earner pursuant to Section 216(h)(2)(B) of the Social Security Act as his mother and the wage earner never went through a marriage ceremony.

3. Terron Hayes is not the "child" of the wage earner pursuant to Section 216(h)(3)(C) of the Social Security Act as the evidence of record does not establish that the wage earner was ever decreed by a court to be his father, was ever ordered by a court to contribute to his support, or ever acknowledged him in writing. Furthermore, the evidence of record does not establish that the wage earner was his biological father or that the wage earner was either living with him or contributing to his support at the time of his death.

The order of the ALJ became the final decision of the Secretary when the Department's Appeals Council denied the claimant's request for review.

Imani commenced the instant action in federal district court pursuant to 42 U.S.C. § 405(g) for review of the Secretary's decision. The case was referred to a magistrate, who stated in his extensive "report and recommended entry" that there was substantial evidence to support the findings of the Secretary, as the "totality of evidence" confirmed the administrative determination that Terron Hayes was not the "child" of Terry Williams within the meaning of the Social Security Act. The district court adopted the magistrate's report. This appeal followed.

II

Before turning to the substantive questions presented in this appeal, we must first articulate the applicable standard of review. Under 42 U.S.C. § 405(g), the Secretary's findings are conclusive if they are supported by "substan-

tial evidence." This standard applies to the district court's review of the Secretary's decision as well as this court's review of the district court's decision. *Schaefer v. Heckler*, 792 F.2d 81, 84 (7th Cir. 1986). "Substantial evidence" is defined as that which "a reasonable mind might accept as adequate to support a conclusion." *Id.* (quoting *Richardson v. Perales*, 402 U.S. 389, 401, 91 S. Ct. 1420, 1427 (1971)). We are not allowed to reappraise the record. *Davis v. Califano*, 603 F.2d 618, 625 (7th Cir. 1979). The "clearly erroneous" standard for review of a trial court's factual findings under Fed. R. Civ. P. 52(a) does not apply, because the findings under consideration are those of the Secretary, not of the district court. *Schmoll v. Harris*, 636 F.2d 1146, 1150 (7th Cir. 1980). The Secretary's conclusions of law are not entitled to such deference, however, and if the Secretary committed an error of law, reversal is required without regard to the volume of the evidence in support of the factual findings. *Id.*

Section 202(d)(1) of the Social Security Act ("Act"), codified as amended at 42 U.S.C. § 402(d)(1), establishes the criteria for entitlement to child's insurance benefits. It provides that every "child," as defined by 42 U.S.C. § 416(e), of an individual who dies fully or currently insured under the Act is entitled to these benefits if the child has applied for the benefits, is unmarried, under 18 years of age, and was dependent on the deceased individual at the time of the latter's death.

Dependency is presumed for certain classes of children. *See* 42 U.S.C. § 402(d)(3). 42 U.S.C. § 416(h)(2) sets forth the rules for the determination of family status. Under § 416(h)(2)(A), benefits are available to those children who, under the substantive law of the insured decedent's domicile, would be considered a child of the insured for the purposes of intestate succession. If the applicant fails to meet that requirement, he can under § 416(h)(2)(B) still demonstrate that he is entitled to benefits by showing that the insured participated in a marriage ceremony that would be valid but for a nonobvious defect. If the applicant cannot

satisfy this requirement, he may under § 416(h)(3)(C)(i) prevail nonetheless if he shows that the insured had acknowledged in writing that the applicant was his child, that the insured had been decreed by a court to be the parent of the applicant, or that the insured had been ordered by a court to contribute to the support of the applicant because the applicant was the child of the insured. Finally, the applicant is entitled to benefits under § 416(h)(3)(C)(ii) if he shows "by evidence satisfactory to the Secretary" that the insured was the applicant's parent and was either living with or contributing to the support of the applicant at the time of death.

It is undisputed that Imani and Williams never married and that Williams did not acknowledge in writing that Terron was his child, was not found to be his father in paternity proceedings, and did not contribute to Terron's support pursuant to a court order. Thus, Imani failed to demonstrate that her son was entitled to benefits under either § 416(h)(2)(B) or § 416(h)(3)(C)(i). Nonetheless, Imani argues that Terron is entitled to benefits under § 416(h)(2)(A) (intestate succession) or § 416(h)(3)(C)(ii) (satisfactory evidence of paternity and proof of support from deceased).

Terry Williams was domiciled in the state of Missouri at the time of his death. Thus, under § 416(h)(2)(A), the Secretary must apply that state's law of intestate succession to determine whether the applicant was the child of Williams. The pertinent statute is Mo. Rev. Stat. § 474.060(2) (1985),[1] which provides in relevant part:

> [A] person born out of wedlock is a child of the mother. That person is also a child of the father, if . . .

[1] This law did not become effective until January 1, 1981, and its predecessor was held unconstitutional prior to that date, but after Imani's application had been filed. However, the Secretary has concluded that the 1981 law shall apply to applications filed prior to its effective date. *See* 49 Fed. Reg. 21,513 (1984).

> (2) The paternity is established by an adjudication before the death of the father, or is established thereafter by clear and convincing proof . . . .

"Clear and convincing proof" has been defined in the context of establishing illegitimacy as that which "leaves no room for doubt" and as requiring "a quantum of evidence such that no conclusion other than that of illegitimacy can be reached." *B.S.H. v. J.J.H.*, 613 S.W.2d 453, 457 (Mo. App. 1981). The burden of persuasion does not seem to be so severe when one seeks to establish paternity. Nonetheless, a recent Missouri decision suggests that the burden remains high under § 474.060(2), certainly higher than the preponderance standard. *Estate of Pope v. Hook*, 670 S.W.2d 943 (Mo. App. 1984); *see also Greer by Greer v. Heckler*, 756 F.2d 794 (10th Cir. 1985).[2]

Imani argues that she made out her case under Missouri law, and, therefore, that the Secretary's decision was not supported by substantial evidence. The ALJ noted in his order that there was some evidence tending to support a finding that Williams was the claimant's father. However, the ALJ also noted that there was evidence suggesting that Williams was not. This "negating" evidence did not directly refute paternity, but consisted of either inconclusive or inconsistent testimony. Hence, it is clear that, unless we impute an element of undeterminable, and

[2] Thus, the ALJ was correct in requiring "clear and convincing" evidence to establish paternity, and we must reject Imani's argument that he imposed too stringent an evidentiary burden under Missouri law. We need not determine whether the definition of the term "clear and convincing" articulated in *B.S.H. v. J.J.H.*, 613 S.W.2d 453, 457 (Mo. App. 1981), applies to Mo. Rev. Stat. § 474.060(2) (1985), *see Aversman v. Danner*, 616 S.W.2d 117 (Mo. App. 1981), because, as our subsequent discussion will indicate, it is clear from the ALJ's decision that he simply did not believe Imani. There was, therefore, a failure of proof due to the adverse credibility determination. This is not a case in which the ALJ found that, although some of the testimony in favor of the applicant was credible, there was simply not enough of it.

thus unreviewable, irrationality to the administrative decision-making process, the ALJ must have discredited Imani's testimony, although he did not expressly so state in his order.

There were inconsistencies in the record. Nonetheless, by its very nature, the relationship between Imani and Williams—even as she tells the story—was transitory, and it is obvious that neither had it in mind to establish by his conduct a record for a future paternity proceeding. Affairs of the heart are not ordinarily structured by the rules of evidence. In addition, their relationship occurred almost ten years before the second administrative hearing was held, so that many of the inconsistencies are consistent with failing memory, as well as fabrication.

However, that we might have reached a different conclusion does not mean that the ALJ reached the wrong one. He observed the witnesses directly, and those intangible, unarticulable elements that constitute "credibility" unfortunately leave no trace that can be discerned in this or any other transcript we must review. In a case such as this, where the physical evidence Imani offered in support of paternity was not persuasive and the traditional sources of proof were tragically foreclosed, credibility is crucial. Unless the ALJ's assessment of the witnesses is patently wrong in view of the cold record before us, it must stand. After a thorough review of that record, we cannot say that the ALJ's rejection of Imani's story was incorrect. We are also not unmindful that this application for benefits has been considered and reconsidered several times and that Imani consistently failed to persuade both the Secretary and the district court. She has not argued that she was denied fair treatment in the processing of the application. In view of these considerations, we must then uphold the Secretary's finding that Imani did not establish by clear and convincing evidence that Williams was the father of Terron.

Imani refers us to several cases in which paternity was established. She claims that these decisions have fact pat-

terns similar to the instant case and argues that they are controlling. That a description of the evidence presented in another case might bear a resemblance to that of the instant case does not mean that we are bound by that decision. There are many reasons why an ostensible factual correspondence is not controlling. The dispositive factor here is that, although Imani made statements that would support the conclusion that Williams was the father, the ALJ simply did not believe her. Because of that disbelief, this was a close case, and in close cases the Secretary prevails.

Imani also argues that she presented "evidence satisfactory to the Secretary" to show paternity and that she demonstrated that Williams was living with or contributing to the support of Terron at the time of death, so that the requirements of § 416(h)(3)(C)(ii) were satisfied. Our discussion above regarding the failure of proof on the question of paternity under Missouri law should apply here also, because the ALJ indicated that, with reference to § 416(h)(3)(C)(ii), the record failed to show that Williams was the biological father. Thus, he apparently did not believe enough of Imani's story to meet the less stringent burden of persuasion of § 416(h)(3)(C)(ii).[3] As we noted above, we perceive no reason to disturb that credibility determination.

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[3] It is obvious to us (and there is no reason to conclude that the ALJ was not also aware of this) that as a matter of logic the burden of proof under § 416(h)(3)(C)(ii) must be less than that of § 416(h)(2)(A). The latter provision, which must be considered first in the sequence of tests to determine family status, requires proof of paternity under the appropriate state law, while the former requires proof of paternity *and* support. Thus, if paternity is not shown under § 416(h)(2)(A) and the burden of proof is the same under both provisions, then the question of support is irrelevant and § 416(h)(3)(C)(ii) serves no function whatsoever. To be of any practical value, then, § 416(h)(3)(C)(ii) must be read as relaxing the burden of proof on the requirement of paternity while adding the requirement of proof of support. There, however, is no need for us to discuss the interactions between these two requirements, because of the failure of proof of support in this case.

We do note that Imani takes issue with the requirements of § 416(h)(3)(C)(ii), and argues that they invest the Secretary with "unbridled discretion." An objection to the latitude accorded an agency by statute, as opposed to regulation, is best addressed to the legislature. In any event, we need not extensively discuss the standard for determining paternity under that provision, because there is simply nothing in the record to support the second requirement of § 416(h)(3)(C)(ii), *i.e.*, that Williams was either living with or contributing to the support of Terron at the time of his death.

It is true that some adjustment to the manner of proving support should be made when the applicant is an illegitimate child born after his alleged father (especially one who was not regularly employed) dies. In such a case, the attention and support conferred upon the mother inures to the benefit of the fetus, and the Secretary should consider whether the alleged aid is commensurate with the needs of the unborn child at the time of the father's demise. *See Schaefer v. Heckler*, 792 F.2d 81, 85-87 (7th Cir. 1986).

Nonetheless, as we noted in *Schaefer*, "in cases involving children born after or shortly before the wage earner's death some tangible support is still required . . . ; a mere expectation of support from the insured wage earner is not enough." *Id.*, slip op. at 10-11. That conclusion is controlling here. Imani did not show that during the course of their brief relationship Williams was living with her or that he was supporting her. He apparently spent some money on beer and food when they were together, but to say that these expenditures satisfy § 416(h)(3)(C)(ii) means that courtship is tantamount to support, which, in view of the purposes of the Act, *see Mathews v. Lucas*, 427 U.S. 495, 507, 96 S. Ct. 2755, 2763 (1976), cannot be correct. Imani and Williams broke off their relationship and never saw each other again because Williams refused to take Imani out on a "regular" date and to pay for their entertainment. There was no statement in the record that he was unable on that occasion to provide the funds; the clear implication was that he simply did not want to.

Of course, that the father feels animosity or indifference towards the mother does not necessarily mean that he harbors similar feelings for the unborn child, and he could provide the mother with support that will indirectly benefit the fetus. However, according to Imani's own testimony, Williams knew that she might be pregnant for two weeks before he died. Still, he did nothing for her, except (perhaps) provide, through a mutual friend, $10 for a pregnancy test. This ambiguous admission by conduct, especially in view of the other evidence in the record, cannot persuade us that the ALJ was wrong in concluding that Williams, at the time of his death, was not supporting Terron. Thus, we affirm the finding that the support requirement of § 416(h)(3)(C)(ii) was not met.

One issue remains for our consideration. Imani argues that, because § 416(h) requires that certain illegitimate children affirmatively establish dependency while it affords other illegitimate children a presumption of dependency, the provision creates classifications that violate the equal-protection component of the Fifth Amendment's due-process clause. This claim, however, is foreclosed by the Supreme Court's decision in *Mathews v. Lucas*, 427 U.S. 495, 96 S. Ct. 2755 (1976), and merits no further discussion here.

III

For the reasons stated above, the judgment of the district court is AFFIRMED.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

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Order of United States District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

NIA J. IMANI, on behalf of TERRON HAYES,	)	
Plaintiff	)	
vs.	)	CAUSE NO. IP 83-1820-C
MARGARET M. HECKLER, Secretary of the Department of Health and Human Services,	)	
Defendant.	)	

ADOPTION OF ENTRY AND JUDGMENT

The Magistrate, having submitted his Report of Review and Recommendation which reads as follows:

(H.I.)

and counsel having been afforded due opportunity pursuant to statute and the Rules of this Court to file objections thereto, the Court having considered the Magistrate's Report and having given de

novo consideration to the objections thereto, and being duly advised, finds that the Magistrate's Report and Recommended Entry should be, and is hereby, approved and adopted by the Court.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff take nothing by way of her complaint and that the decision of the defendant, Secretary of the Department of Health and Human Services, be AFFIRMED. Costs versus plaintiff.

Dated this 8th day of February, 1984.

/s/ William E. Steckler
WILLIAM E. STECKLER,
Judge
United States District
Court
Southern District of
Indiana

Magistrate's Memorandum Decision

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

NIA J. IMANI, on behalf of TERRON HAYES,	)	
Plaintiff	)	
vs.	)	CAUSE NO. IP 83-1820-C
MARGARET M. HECKLER, Secretary of the Department of Health and Human Services,	)	
Defendant.	)	

NOTICE OF FILING OF MAGISTRATE'S REPORT OF REVIEW, RECOMMENDATION, PROPOSED MEMORANDUM OF DECISION AND JUDGMENT THEREON

You are hereby notified that the undersigned United States Magistrate has this date filed the attached Magistrate's Report of Review and Recommendation, Proposed Entry and Judgment Thereon with the Honorable William E. Steckler, United States District Judge, pursuant to the order of reference in said cause.

Counsel shall have ten (10) days from the date of filing of the report to file objections thereto and objections to the entry of judgment in accordance therewith.

Dated this 12 day of September, 1984.

/s/ J. Patrick Endsley
J. PATRICK ENDSLEY,
Magistrate
United States District
Court
Southern District of
Indiana

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

NIA J. IMANI, on behalf of TERRON HAYES,	)	
Plaintiff	)	
vs.	)	CAUSE NO. IP 83-1820-C
MARGARET M. HECKLER, Secretary of the Department of Health and Human Services,	)	
Defendant.	)	

MAGISTRATE'S REPORT OF REVIEW, RECOMMENDATION, PROPOSED MEMORANDUM OF DECISION AND JUDGMENT THEREON

This cause came on before the Court by the undersigned United States Magistrate, upon reference by the Honorable William E. Steckler, United States District Judge, pursuant to 28 U.S.C. §626(b) and Rule M4(1) of the

United States District Court for the Southern District of Indiana (1983).

Based upon the complaint, answer thereto, including a certified copy of the record, and the briefs of the parties, the United States Magistrate makes the following report and recommendation and submits a proposed memorandum of decision and form of judgment accordingly.

/s/ J. Patrick Endsley
J. PATRICK ENDSLEY,
Magistrate
United States District
Court
Southern District of
Indiana

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

NIA J. IMANI, on behalf of TERRON HAYES,	)	
Plaintiff	)	
vs.	)	CAUSE NO. IP 83-1820-C
MARGARET M. HECKLER, Secretary of the Department of Health and Human Services,	)	
Defendant.	)	

ENTRY

This action was commenced by the plaintiff, Nia J. Imani, with the timely filing of her complaint on November 14, 1983, against Margaret M. Heckler, Secretary of the Department of Health and Human Services.

She brings this action pursuant to 42 U.S.C. §405(g) for review of an adverse final decision dated September 19, 1983,

by the Appeals Council of the Department, which denied plaintiff's request for reversal of the Administrative Law Judge's (hereinafter "A.L.J.") decision denying her application for child's benefits on behalf of Terron Lamont Hayes pursuant to Title II, Sections 202(d), 216(e) and 216(h) of the Social Security Act (hereinafter "Act"). 42 U.S.C. §§402(d), 416(e), 416(h), as amended. The issues were joined by the answer of the defendant filed March 9, 1984, together with a certified copy of the transcript of the record, including the evidence upon which the findings and decision complained of are based.

Plaintiff has filed a motion for summary judgment and memorandum in support. Since the entire administrative record is before the Court, we decline to review this matter solely with respect to the

pleadings and memoranda which have been filed and will review the record in accordance with our statutory mandate. 42 U.S.C. §405(g).

The Court, having reviewed the pleadings, the briefs of the parties, and the transcript of the record and being duly advised, does now affirm the decision of the defendant Secretary for the reasons set out herein.

HISTORY

Nia J. Imani, a/k/a Ramona Hayes, filed an application for surviving child's insurance benefits of Terron Lamont Hayes on November 22, 1976. After her claim was denied by the Department she sought reconsideration and was again denied benefits. She then timely requested a hearing before an A.L.J.

The A.L.J. before whom the claimant and her counsel first appeared conducted a statutory hearing on December 18, 1978, at Indianapolis, Indiana. Subsequently, in a decision dated March 6, 1979, the A.L.J. found that entitlement to benefits had not been established. (R. at 124-127)

Pursuant to court order in Boatman v. Schweiker, (N.D. Ill. Docket Number 78 C 299), the Secretary re-examined the claimant's original application and denied the claim in a notice dated April 14, 1982. (R. at 128) Upon reconsideration, claimant was again denied benefits. She then timely requested another hearing before an A.L.J.

The A.L.J. conducted the hearing on February 7, 1983, at Indianapolis. Indiana. The plaintiff, who was once again represented by counsel, appeared and testified. Subsequently, the A.L.J. found

that Terron Hayes was not entitled to child's benefit upon the application filed on his behalf on November 22, 1976.

After considering the evidence, the A.L.J. made the following specific findings, dated June 17, 1983:

1. Terron Hayes is not the 'child' of the wage earner under Missouri State law as required by Section 216(h)(2)(A) of the Social Security Act.

2. Terron Hayes is not the 'child' of the wage earner pursuant to Section 216(h)(2)(B) of the Social Security Act as his mother and the wage earner never went through a marriage ceremony.

3. Terron Hayes is not the 'child' of the wage earner pursuant to Section 216(h)(3)(c) [sic] of the Social Security Act as the evidence of record does not establish that the wage earner was ever decreed by a court to be his father, was ever ordered by a court to contribute to his support, or ever acknowledged him in writing. Furthermore, the evidence of record does not

> establish that the wage earner was his biological father or that the wage earner was either living with him or contributing to his support at the time of his death.

(R. at 17)

The A.L.J.'s decision became the final decision of the Secretary of the Department of Health and Human Services when the Appeals Council denied plaintiff's request for review of the A.L.J.'s decision on September 19, 1983. (R at 3) This action followed.

ISSUES BEFORE THE COURT

The only issue before the Court is whether there is "substantial evidence" to support the Secretary's decision that Terron Hayes is not the "child" of the wage earner within the meaning of the Act. 42 U.S.C. §405(g). Substantial evidence is defined as:

> Such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. We must affirm the Secretary's decision] if the record contains substantial evidence to support the A.L.J.'s findings and there has been no error of law.

Strunk v. Heckler, 732 F.2d 1357, 1359 (7th Cir. 1984) (Citations omitted.)

It is for the Secretary to weigh the evidence and resolve conflicts therein, and the purpose of review in the District Court is not a de novo proceeding, but a review of the Secretary's findings to establish whether there is substantial evidence to support the Secretary's conclusion. Berry v. Schweiker, 675 F.2d 464 (2d Cir. 1982); Schaffer v. Califano, 433 F. Supp. 1218 (D. Md. 1977).

REVIEW OF RECORD

During her most recent hearing before an A.L.J. the claimant, Nia Imani,

formerly known as Ramona Hayes, testified that she is the mother of Terron Hayes and that he was born on June 4, 1973. (R. at 36) According to the claimant, from May or June of 1972 to August of 1972, she attended a college preparatory course in Jefferson City, Missouri. She denied *having any sexual contacts during that period of time. (R. at 37, 44-46) The claimant returned to her parents' home in Columbia, Missouri and after a week, if that long, she met the wage earner, Terry Williams, when her friend, Wanda Stapleton (who is also her cousin and is presently Wanda Coates), introduced the two of them to each other. (R. at 46-48)

The claimant testified that she knew Terry Williams from August, 1972, until his death on November 4, 1972. She was seventeen (17) and he was about

twenty-three (23) years old at the time. (R. at 37, 49) The claimant stated that she did not have a romantic or special relationship with any other person during that time. (R. at 37)

According to the claimant, she and Terry Williams met very regularly at Wanda Stapleton's house. Initially, they simply sat and talked with one another, and would occasionally walk to the park. The claimant testified that Terry Williams was not working at that time, he had been in the Army, and that he was born and buried in Columbia, Missouri. (R. at 48-51)

After a couple of weeks or so, their relationship sped up; the claimant and Terry Williams began having sexual contacts at Wanda Stapleton's house. (R. at 48, 52) Later on, these sexual contacts also occurred at the home of

claimant's sister, Danese Williams. (R. at 53)

The claimant was unable to recall the number of sexual contacts she had with Terry Williams or the date when they began meeting at her sister's house. (R. at 53-54) She opined that such contacts occurred maybe five or six times. She remembered* having any sexual contacts during that period of time. (R. at 37, 44-46) The claimant returned to her parents' home in Columbia, Missouri and after a week, if that long, she met the wage earner, Terry Williams, when her friend, Wanda Stapleton (who is also her cousin and is presently Wanda Coates), introduced the two of them to each other. (R. at 46-48)

Editor's Note:
*Material between asterisks on pp. 27-7a was repeated in original order and should be disregarded.

The claimant testified that she knew Terry Williams from August, 1972, until his death on November 4, 1972. She was seventeen (17) and he was about twenty-three (23) years old at the time. (R. at 37, 49) The claimant stated that she did not have a romantic or special relationshp with any other person during that time. (R. at 37)

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Terry Williams began having sexual contacts at Wanda Stapleton's house. (R. at 48, 52) Later on, these sexual contacts also occurred at the home of claimant's sister, Danese Williams. (R. at 53)

The claimant was unable to recall the number of sexual contacts she had with Terry Williams or the date when they began meeting at her sister's house. (R. at 53-54) She opined that such contacts occurred may five or six times. She remembered the first and the last time, and testified that the last time was about two weeks before Terry Williams was killed and tht it occurred at her sister's house. (R. at 54)

According to the Claimant, who resided with her mother, her friend Wanda Stapleton lived right across the street from them. Her sister Danese lived about

two blocks away from Wanda's house. Terry Williams lived with his mother about a half mile away. (R. at 47, 54-55) The claimant stated that after her last sexual contact with Terry Williams she got mad at him. She wanted him to take her to the show, but he would not take her unless she could afford it. She left him, went home, and did not see him again after that. She did not date anyone else between that period of time and Terry Williams' death. (R. at 56)

The claimant first learned that she was pregnant in October, 1972. She testified that she was late with her menstrual period at an unknown date, felt different, felt pregnant, and went to a local Planned Parenthood. A pelvic, and a urine analysis were performed and claimant was informed that there was a good chance that she was pregnant, but that they could not be sure. She was

told to come back in a couple of weeks to have the tests done again. (R. at 59)

According to the claimant, she called the deceased (Terry Williams) at his mother's home about two weeks before he died and told him there was a strong possibility that she was pregnant. (R. at 37, 69) She testified that she was really defensive when she called to tell him because they had split up earlier over his refusal to take her to the movie. (R. at 68-69) He responded by telling her he believed it was probably true that she was pregnant and that she should just go ahead and go to the doctor and take care of it, find out for sure. Claimant testified that Terry knew that he was the father. (R. at 36-38)

The claimant alleges that Terry Williams told his mother that she was going to be a grandmother and that he had

to get a job. She also testified that Terry also relayed this information to a cousin. (R. at 40) This is, at best, hearsay as to the claimant, however, since she had previously testified that after the split the only contact she had with Terry was the telephone conversation described above.

The claimant indicated that on November 3, 1972, she returned to Planned Parenthood for further testing and was informed that she was pregnant. She vaguely recalled that they may have told her that she was two months pregnant. Claimant was unable to get in touch with Terry Williams to relate this information before he was murdered on November 4, 1972. (R. at 38-39, 59-60) She testified that exactly seven months later, on June 4, 1973, she delivered her full-term baby boy, Terron Hayes at the

Boone County Hospital in Columbia, Missouri. (R. at 39, 60-61) Claimant also testified that she told the hospital personnel that Terry Williams was the child's father and that she wrote Terry's name down as the father on Terron's original application for a birth certificate. However, she later discovered that if the mother is not married, the birth certificate will not include mention of the child's putative father. (R. at 62)

Concerning contributions made by Terry Williams toward the support of claimant and Terron, claimant testified that Terry would buy her "what she needed to eat and whatever" during their all-day and all-night visits at other people's houses. She indicated that Terry did not have that much money, but that occasionally they caroused a little and

he would buy her a beer or something. Later, she testified that she hardly ate at home and often just ate at friends' homes. In order to offset this imposition, Terry would give these friends some money. Claimant did not know how much money passed hands, but stated that it was not on a regular basis. Rather, this occurred off and on whenever Terry had some money. (R. at 67, 73-74)

Claimant also stated that Terry Williams gave some money to Wanda Stapleton, and that Wanda was to give it to claimant so she could pay for Planned Parenthood. Claimant testified that this happened between her first and second visit to Planned Parenthood, that Terry did not give her any more money for that purpose, but that she did not really need it anyway since Planned Parenthood charged its patients according to their

income. She learned this at the time of her second visit. (R. at 68-70)

According to the claimant, she moved to Indianapolis, Indiana, in July, 1975, because she felt that Terron's grandmother (Terry's mother) did so much for him all the time and claimant was afraid that this was due, in part, because the grandmother was treating Terron as though he were her deceased child, Terry Williams. Claimant testified that she has not been married since that time and that she is still unmarried. She explained her failure to file for child's benefits until 1976 as a result of her fear that her child would be taken away from her and the fact that she really had not thought too much about filing until Terry's mother asked her if she had done so. (R. at 64-66) She also mentioned that her child, Terron, has

lived with her at all times since his birth. (R. at 66)

The record also contains medical evidence and other documents which have been submitted in this matter. This evidence includes a copy of Terry Williams' birth certificate, showing his date of birth as September 12, 1950. This indicates that Terry was twenty-one (21) when he met the claimant and that he turned twenty-two (22) during their brief relationship. (R. at 100) Exhibit 9 is a copy of Terry's honorable discharge from the Air Force. (R. at 101) His death certificate shows that he passed away on November 4, 1972, and that he died as a result of a shotgun wound to his head. (R. at 103) A certified copy of Terron's birth certificate lists his death of birth as June 4, 1973, and does

not include the name of the child's father. (R. at 106)

A report of contact with the claimant, dated December 17, 1976, includes the following statement: "Ms. Hayes (claimant) states that Terry (Williams) never lived with her nor did he ever contribute to her support. She lived at home with her mother. He was just a boyfriend." (R. at 113) A statement submitted by the claimant on the same date indicates that

> "[T]erry Williams never lived with me or ever supported me in any capacity. He was my boyfriend. I lived with my mother. There is an adjustment that must be made on this statement, though he didn't support me he did give me money for the 2 doctor bills that I made trying to verify my condition (pregnancy)."

(R. at 114) (Claimant testified during the hearing that she did not think Terry gave her more than Ten Dollars ($10.00)

in this regard because the tests did not cost much.) (R. at 68)

A child relationship statement completed by claimant and dated November 22, 1976, indicates that Terry Williams told a cousin named Darrly (sic.) Freelon that he was the father of Terron. It also indicates that Terry Williams told his mother the same and that she knows that Terron is her son's child. (R. at 110) (The record does not contain a statement made by Darrly (sic.) Freelon.) A statement submitted by the claimant on the same date shows: "Terry Williams died before my child was born. I told him I thought I was pregnant. His parents have gone to court to try to get my son's name changed to Williams, as they agree Terron is their son's child." (R. at 111)

A statement submitted by Terry's mother, dated December 23, 1976, reads, "[m]y son, Terry Williams, knew of the baby. He spoke of it and said it was his own." (R. at 116) A statement signed by Terry's parents and dated July 18, 1978, states:

> We the undersigned, Sehon and Dora Williams solemnly swear that we are fully aware that Ramona Hayes gave birth to a son fathered by our son Terry Williams. Our son was killed prior to the birth of this child, but we do recognize this child as our grandson. The above statements are true to the best of our knowledge and belief." (R. at 118)

Claimant's sister, Danese Williams, has also indicated her familiarity with the relationship in question. A notarized statement dated February 15, 1979, indicates that Danese

> knew Terry Williams and Ramona Hayes very well and I knew that they were going together from August 21 through November 4, the date of Terry Williams' death. I knew that their

> relationship was steady and regular because they met at my home daily during the time of August 21 to September 30, at which time they often stayed the night. I also saw Terry Williams give Ramona Hayes money and he sometimes bought food for both of them to eat at my home."

(R. at 122) A statement by Danese, dated February 3, 1981, states: "I am the sister of Nia Imani and aunt of Terron Hayes. Both my sister and Terry (they went together) acknowledged that Terry was the father of Terron." (R. at 136)

In a statement dated January 27, 1982, Terry's parents indicated that "[w]e both affirm that our son, Terry, was the father of Terron Hayes and that Nia J. Imani was the mother." (R. at 138) A child relationship statement completed by Dora Williams, filed February 22, 1982, reads as follows:

> In October of '72 he (Terry) informed me that I would be grandmother again. The mother of his child had not finished

> high school. But he was killed November 4, 1972, and could not fulfill plans for marriage. He also told a friend at that time, her name is Mrs. Wanda Coats [sic], who still resides here in Columbia, Mo.

(R. at 141)

The record also contains several documents relating to the attempts made by Terry's parents to have Terron's surname changed from Hayes to Williams. These documents include court records and show that Terry's parents believe that they are the paternal grandparents of Terron. These documents do not indicate whether or not Terron's surname was ever changed by order of the court. (R. at 143-150)

Claimant testified during the hearing that her son, Terron, and Terry Williams bear a striking resemblance to one another, and she submitted a picture of Terry Williams when he was in the

sixth grade and one of Terron when he was in second grade for the sake of comparison. (R. at 33-36, 41-43, 154) The claimant also indicated that she had some blood test information to submit on the issue of paternity. This information, which included documents identifying the blood types of claimant, Terry, and Terron, were received into evidence at that time. (R. at 32-33, 77-78, 151-153) A medical report by Dr. Walter Daly was received subsequent to the hearing and made part of the record herein. This report indicates that the documents referred to above show that claimant has blood type B+, Terron has type AB+, and Terry williams has type A+. Based on this information, Dr. Daly found that

> "[t]his combination does not exclude paternity. It is entirely possible for the individual in question to have fathered a child who is AB+ if

> the mother is B+. It is not possible to determine the parentage on this basis however, because approximately 3 out of 10 black males in this country could have the proper genes to have fathered an AB+ child with a mother who is B+.

(R. at 173)

The record also contains hospital records dated June 4, 1973, which show the onset of pregnancy as August of 1972, and under the name of the father they list "single." These records indicate the date the baby was due to be born as "late May." (R. at 161-166)

In his decision denying the claimant benefits on behalf of her child, dated June 17, 1983, the A.L.J. found that the record contains the following evidence which tends to show that the decedent is the father of Terron:

> 1. The child's name is Terron Lamont, the decedent's was Terry Lamont, 2. The decedent's parents have repeatedly conducted themselves in a manner showing their belief

> that the decedent is the father; 3. the blood types are consistent with the alleged parentage; 4. The claimant has declared that she had no other sexual contact, had sexual contact with the decedent, and 'knows' that he was the father.

(R. at 16-17)

The A.L.J. also found that there is evidence which tends to show that the decedent is not the father of Terron:

> 1. The time table comes close to ruling out sexual contact with decedent during the crucial month of August 1972 when in all likelihood Terron Hayes was conceived; 2. The deceased was never unequivocally informed that he was the father, and others to whom he allegedly declared his parentage, have not made statements supportive of these claims; 3. The blood types are consistent with other types of parentage; 4. There are serious conflicts in the evidence on important details; a. the claimant's sister stated that sexual contacts occurred at her house, whereas the claimant placed them initially at a friend's home, Wanda Stapleton Coats --and there is no statement from Wanda Stapleton; b. The claimant initially claimed that the decedent gave

> her money for two doctor bills, whereas at the hearing she said that the decedent sent $10.00 through (she believed Wanda Stapleton, and that she was not charged in fact for either visit.

(R. at 17)

Although the A.L.J. did not make any specific findings concerning claimant's credibility, he did mention other inconsistencies in the evidence. He noted that claimant testified that Terry Williams was twenty-three (23), when in fact he was twenty-one (21) and turned twenty-two (22) years old during their relationship. Claimant said that Terry had been in the Army, whereas his record shows that it was the Air Force. In her application for benefits, claimant indicated that she did not know the name of the decedent's employer, but at the hearing she testified that Terry Williams was not working. The A.L.J. found that

the alleged resemblance between Terry and Terron (based on the comparison of their pictures) was not apparent to him. (R. at 14-16)

In her application requesting the Appeals Council to review the A.L.J.'s decision, the claimant responded to the inconsistencies noted by the A.L.J. in his decision. She indicated that eleven years have passed between the time she met Terry and her hearing before the A.L.J., and that it should be of no consequence if "I had Terry's age confused by a month of two." She noted that during her relationship with Terry, he was no longer in the military and that they never really discussed his time in the service. She also stated that the information regarding Terry's employment was later relayed to her by Terry's mother.

The claimant indicated that she recently called Planned Parenthood and was advised that the most probable date of conception was September 10th, based upon a full-term pregnancy terminating on June 4, 1973. In this regard, she also mentioned that the hospital records which listed August, 1972, as the date of the onset of her pregancny would have her pregnancy ten (10) months long. The claimant contends that the timetable is incorrect because the A.L.J. is presuming that her pregnancy lasted ten (10) months. Rather, a nine (9) month timetable should be employed. Accordingly, Terron had to have been conceived in September of 1972. (R. at 7-11)

DISCUSSION

In order to be eligible for surviving child's insurance benefits on

the record of the wage earner, the claimant must establish that Terron Lamont Hayes is the "child" of the wage earner as that term is defined in the Social Security Act.

Section 202(d)(1) of the Act provides, as pertinent here, for the payment of insurance benefits to a child (as defined in Section 216(e) of the Act) of an individual who dies a fully or currently insured individual if the child has filed an application for child's insurance benefits, is unmarried, and was dependent on such individual at the time of his death. 42 U.S.C. §402(d)(1). Section 216(d) of the Act provides, as pertinent here, that the term "child" means the child or legally adopted child of an individual. 42 U.S.C. §416(e).

Section 216(h) of the Act delineates the requirements which must be met in

order to qualify as a "child" for the purposes of receiving surviving child's insurance benefits as follows:

* * * *

> (2) (A) In determining whether an applicant is a child or parent of a fully or currently insured individual for purposes of this sub-chapter, the Secretary shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individiaul is domiciled at the time such applicant files application, or, if such insured individual is dead, by the courts of the State in which he was domiciled at the time of his death, or if such insured individual is or was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking intestate personal property as a child or parent shall be deemed such.
>
> (B) If an applicant is a son or daughter of a fully or currently insured individual but is not (and is not deemed to be) the child of such insured individual under

subparagraph (A), such applicant shall nevertheless be deemed to be the child of such insured individual if such insured individual and the mother or father, as the case may be, of such applicant went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in the sentence of paragraph (1)(B), would have been a valid marriage.

(3) An applicant who is the son or daughter of a fully or currently insured individual, but who is not (and is not deemed to be) the child of such insured individual under paragraph (2) of this subsection, shall nevertheless be deemed to be the child of such insured individual if:

* * *

(C) In the case of a deceased individual --

(i) Such insured individual--

(I) Had acknowledged in writing that the applicant is his or her son or daughter,

(II) Had been decreed by a court to be the mother or father of the applicant, or

(III) Had been ordered by a court to contribute to the support of the applicant because the applicant was his or her son or daughter, and such acknowledgement, court decree, or court order was made before the death of such insured individual, or

(ii) Such insured individual is shown by evidence satisfactory to the Secretary to have been the mother or father of the applicant, and such insured individual is living with or contributing to the support of the applicant at the time such insured individual died.

42 U.S.C. §416(h)(2)(A), §416(h)(2)(B), §416(h)(3), §416(h)(3)(C) (emphasis added).

The A.L.J. found that the claimant had not established that Terron Lamont Hayes is the child of the deceased wage earner within the meaning of Section 216 of the Social Security Act. 42 U.S.C. §§402(d), 416(e), 416(h) as amended. As

a result, the A.L.J. denied plaintiff's claim and found that Terron Hayes is not entitled to child's insurance benefits on the record of the wage earner. (R. at 17-18)

Based on the evidence and testimony reviewed above, the Court concludes that the A.L.J.'s findings are supported by substantial evidence in the record and that the claimant has failed to carry her burden of proof. The Act provides that the findings and inferences reasonably drawn therefrom, if supported by substantial evidence, shall be conclusive. 42 U.S.C. §405(g); Schmoll v. Harris, 636 F.2d 146 (7th Cir. 1980).

In determining whether Terron Hayes is the child of the wage earner pursuant to Section 216(h)(2)(A) of the Act, said statute directs the Secretary to apply such law as would be applied in

determining the devolution of intestate personal property by the courts of the State in which the insured individual was domiciled at the time of his death.

In this case, the wage earner was domiciled in Missouri at the time of his death in 1972. Under the Missouri Code in force in November, 1972, an illegitimate child could prevail in a claim against the estate of his "father" only if the child's father had, before his death, married the child's mother and recognized the child as his own. Missouri Revised Statutes, §§474.060; 474.070 (1969). However, this statute was later determined to be unconstitutional. Gross v. Harris, 664 F.2d 667 (8th Cir. 1981). In 1981, Missouri amended the statute to its present form, which states that a child acquires the stature of the natural

father's child for inheritance purposes if:

> (1) the parents participate in a marriage ceremony before or after the birth of the child; or (2) paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof.

Vernon's Annotated Missouri Statutes, §474.060 (1981).

The A.L.J. found that "while there is evidence tending to show paternity, it is not clear and convincing evidence thereof. Therefore, the claimant has not proved that the wage earner was the father under the law of the State of Missiouri. . . ." (R. at 17) This Court finds that the A.L.J.'s conclusion in this regard is supported by substantial evidence in the record. Under Missouri law, clear and convincing evidence is that amount of proof which leaves no doubt, e.g., it must compel no other

conclusion. See, B.S.H. v. J.J.H., 613 S.W. 2d 453 (Mo. App. 1981). We are not prepared to find that the evidence submitted in this matter leaves no doubt that Terron Hayes is the child of the deceased wage earner.

The Court also finds that the record contains substantial evidence to support the A.L.J.'s findings that Terron is not the child of the deceased within the meaning of Sections 216(h)(2)(B) and 216(h)(3)(C)(i) of the Act, as his mother and the wage earner never went through a marriage ceremony, the wage earner never acknowledged in writing that Terron was his child, and the wage earner was never decreed by a court to be his father, nor was he ever ordered by a court to contribute to Terron's support.

In reaching his decision, the A.L.J. also found that the evidence does not

establish that the wage earner was Terron's father or that the wage earner was either living with Terron or contributing to his support at the time of his death. (R. at 17) Again, this Court finds that the above conclusion is supported by substantial evidence in the record, and thus, Terron Hayes is not the child of the wage earner under Section 216(h)(3)(C)(ii) of the Act. In order to prevail under this section, the claimant must prove both that the wage earner was the father of Terron Hayes, and that the wage earner was either living with or contributing to the support of Terron Hayes at the time of his death. 42 U.S.C. §416(h)(3)(C)(ii).

Assuming, arguendo, that the evidence of record is sufficient to establish paternity to the satisfaction of the Secretary, the instant claim must

still be denied because the wage earner was neither living with the claimant (or her child) at the time of his death, nor was he contributing to the support of the child at such time. Even if the Court were to assume that any contributions by the wage earner toward the support of the claimant also inured to the benefit of her child, we are not prepared to find that a wage earner who provides beer, an occasional meal, and Ten Dollars ($10.00) for a pregnancy test is contributing to the support of said child within the meaning of the Act.

Accordingly, after carefully reviewing and considering the administrative record as contained in the transcript, the pleadings, and the briefs of the parties, the Court finds that there is substantial evidence to support the findings made by the A.L.J. herein,

as adopted by the Secretary. The totality of evidence supports the Secretary's determination that Terron Lamont Hayes is not the child of the wage earner (Terry Williams) within the meaning of the Act. The Court finds that the Secretary properly applied the applicable regulations and finds against the plaintiff herein and affirms the decision of the Secretary, with costs assessed against the plaintiff.

The undersigned United States Magistrate recommends the adoption of the above entry by the United States District Judge.

Dated this 12th day of September, 1984.

/s/ J. Patrick Endsley
J. PATRICK ENDSLEY,
Magistrate
United States District
Court
Southern District of
Indiana

Denial Letter of the Appeals Council

DEPARTMENT OF HEALTH & HUMAN SERVICES
Social Security Administration
Office of Hearings and Appeals
P.O. Box 2518
Washington, D.C. 20013

Refer to: SGC
495-56-0337

September 19, 1983

ACTION OF APPEALS COUNCIL
ON REQUEST FOR REVIEW

Ms. Nia J. Imana (sic.) O/B/O
Terron Hayes
2855 Boulevard Place
Indianapolis, IN 46205

Dear Ms. Imana (sic.):

The request for review of the hearing decision in your case has been considered. Section 404.970 of Social Security Administration Regulations No. 4 (20 CFR 404.970) provides that the Appeals Council will grant a request for review of hearing decision where: (1) there appears to be an abuse of discretion by the administrative law judge; (2) there is an error of law; (3) the administrative law judge's action,

findings, or conclusions are not supported by substantial evidence; or (4) there is a broad policy or procedural issue which may affect the general public interest.

The Appeals Council has concluded that there is no basis under the above regulations for granting the request for review. Accordingly your request is denied and the hearing decision stands as the final decision of the Secretary in your case.

If you desire a court review of the hearing decision, you may commence a civil action in the district court of the United States in the judicial district in which you reside within sixty (60) days from the date of receipt of this letter. It will be presumed that this letter is received within five (5) days after the date shown above unless a reasonable showing is otherwise made. See section 205(g) of the

Social Security Act, as amended (42 U.S.C. 405(g)) and section 422.210 of Social Security Administration Regulations No. 22 (20 CFR 422.210).

If a civil action is commenced, your complaint should name the Secretary of Health and Human Services as the defendant and should include the social security number(s) shown at the top of this notice.

Sincerely yours,

/s/ Constance T. O'Bryant
Constance T. O'Bryant
Member Appeals Council

cc:
Ms. Maxine T. Bennett
Attorney at Law
Indianapolis, IN 46204

HO, Indianapolis, IN (ALJ Lanker)

Decision of the Administrative Law Judge of the Social Security Administration

DEPARTMENT OF
HEALTH AND HUMAN SERVICES
SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS

DECISION

In the case of	Claim for
Nia J. Imana o/b/o Terron Hayes, Claimant	Child's Insurance Benefits
Terry Williams, Wage Earner	495-56-0337 Social Security No.

This case is before the Administrative Law Judge on a request for hearing. The Administrative Law Judge has carefully considered all the documents identified in the record as exhibits, the testimony at the hearing and arguments presented.

ISSUES

The issue before the Administrative Law Judge is whether Terron Hayes is entitled to child's insurance benefits on the record of the wage earner. Specifically at issue is whether he is the "child" of the wage earner within the meaning of the Social Security Act.

STATEMENT OF LAW AND REGULATIONS

Section 202(d)(1) of the Social Security Act provides, as pertinent here, for the payment of insurance benefits to a child (as defined in Section 216(e) of the Act) of an individual who dies a fully or currently insured individual if the child has filed application for child's insurance benfits, is unmarried, and was dependent on such individual at the time of his death.

Section 216(d) of the Act provides, as pertinent here, that the term "child" means the child or legally adopted child of an individual.

Pursuant to Section 216(h)(2)(A) of the Act, a finding as to whether an applicant is the child of an insured individual must be based on the law that, in determining inheritance rights to intestate personal property, would be applied by the courts of the State where the insured individual was domiciled at the time of his death.

Section 216(h)(2)(B) of the Act provides, as pertinent here, that if an applicant is not a child of the insured individual under subparagraph (A), such applicant shall nevertheless be deemed to be the child of such individual if the insured individual and the child's mother went through a marriage ceremony resulting

in a purported marriage between them which, but for a legal impediment, would have been a valid marriage.

Section 216(h)(3)(C) of the Act provides, as pertinent here, that an applicant who is the child of an insured individual but does not qualify as his child under either of the above provisions may still qualify if the individual had acknowledged in writing that the applicant is his child, had been ordered by a court to contribute to the applicant's support, had been decreed by a court to be the father of the child, or is shown by other satisfactory evidence to have been the father of the applicant and was either living with or contributing to the support of the applicant when he died.

EVALUATION OF THE EVIDENCE

The claimant, Ramona Hayes (Nia Imana), filed November 22, 1976 for child's benefits on behalf of Terron Hayes, who, she alleges, was the child of deceased wage earner, Terry Williams, who died insured November 4, 1972. The case was heard before Judge Castelli, who found that the claimant had not proved that Terron Hayes was the child of the wage earner under the Social Security Act. Pursuant to Court Order in Boatman v. Schweiker, the Secretary re-examined the case June 21, 1982, and again denied the claim. The case came on for hearing February 7, 1983, with the claimant represented by her attorney. Testimony and documents were offered.

According to the claimant, from May or June 1972 to about the end of August 1972, she attended a college preparatory

course, but denied any sexual contacts during that period of time. On her return to Columbia, Missouri, after about a week or maybe not that long, she met the wage earner, when her friend, and claimant's cousin Wanda Stapleton (now Wanda Coates) introduced the two. Claimant was 17, and the wage earner was about 22. The claimant testified, contra, that he was about 23. She said that he had been in the Army, whereas his record shows it was the Air Force. She explained this conflict by stating that their conversations with respect to the military status were general. At the time of her application, Exhibit 2, she stated that she did not know the name of the decedent's employer, but at the hearing she testified that Terry Williams was not working.

According to the claimant, she and Terry Williams met "very regularly at Wanda Stapleton's house (according to claimant's sister, Danese Williams, the two met daily at her home from August 21 to September 30, at which time they often stayed the night. Judge Castelli found that the claimant testified before him that she met with the wage earner at the home of a friend, and occasionally spent the night with him at her friend's house) sat and talked, but after a couple to three weeks, the relationship "sped up", i.e. they commenced having sexual relations at Wanda Stapleton's house, and later at the claimant's sister's house (Danese Williams). The claimant further testified: We were just dating, it was a real fast romance, we met a Wanda's house, had sex, I can't say the number of times; we met at my sister's house in between,

can't say when we met at my sister's house; I don't know the number of sexual contacts, five or six maybe; I remember the first, and the last time; the last time was about two weeks before he got killed; we stopped the relationship at Wanda's house because we were monopolizing Wanda's home, I guess; we just met at either home; two weeks before he got killed, I got mad at him-I wanted him to take me to a show, he said if I could afford it, he would take me; we were at the park and I left; and I didn't see him anymore after that; I wasn't dating anyone else at that time, have no sexual relationship with others. The claimaint also testified that they didn't really go out, they just went to the park, and different little parties, he didn't really have that much money. Later she testified that "we caroused a little", he'd buy me

something, beer; and that maybe they would spend all day and an evening, at someone's home, and he'd buy "food and stuff". Still later she testified that she hardly ate at home, but ate at a friend's home, in order not to impose too much on the friend, Terry Williams tried to offset that by giving the friend money, though she didn't know how much, and it wasn't regular, just when he had some money. (These claims are contrary to Exhibits 16 & 17, but are corroborated to some extent by Exhibit 22, a statement of Danese Williams: "I also saw Terry Williams give Ramona Hayes money, and he sometimes bought food for both of them to eat at my home.")

The Claimant testified that she was late with her menstrual period at an unknown date, felt differently, felt pregnant, and went to Planned Parenthood.

They did a pelvic, and urine analysis, and said there was a strong indication that she was pregnant, there was a good chance, but they couldn't be sure and told her to come back in a couple of weeks, have another test to make sure. According to the claimant, she called the deceased at his mother's home about two weeks before he died and told him there was a strong possibility that she was pregnant (she testified she was really defensive when she told him this because they had split up earlier over his refusal to take her to the movie) and he said he believed it was probably true that she was pregnant; he said to go to the doctor and find out for sure, I will take care of it. (In Exhibit 15, the claimant stated: "I told him I thought I was pregnant.")

Exhibit 17, a pre-hearing statement in the claimant's handwriting reads:

". . .he did give me money for the two doctor bills that I made trying to verify my condition (pregnancy)". Judge Castelli's decision states: Claimant testified that "subsequently in about October 1972 she thought she was pregnant, and advised the wage earner of the circumstance. Claimant testified that she then went to the doctor and the wage earner paid $10.00 for a pregnancy test which verified that she was pregnant on November 3, 1973."

At the hearing before the undersigned, the claimant testified that Terry Williams gave about $10.00 to a friend to pay the bill at Planned Parenthood (but that the visit didn't cost that much); he sent the money, I believe with Wanda Stapleton, to pay for planned parenthood. I didn't need any more. Planned Parenthood doesn't charge if you

have no income, so I was $10.00 ahead. I learned when I went back the second time that Planned Parenthood didn't charge."

According to the claimant, on November 3, 1972, when she had the second test at Planned Parenthood, they told her that she was very pregnant, may have said two months pregnant, but she was not able to get in touch with Terry Williams, who was killed November 4, 1972. She testified that seven months later, on June 4, 1973, Terron Hayes was born.

The claimant alleges that Terry Williams told his mother: You're going to be a grandmother, I am going to get a job. This is at best hearsay as to the claimant, since she had previously testified that after they split up, the only contact she had with the claimant was the telephone contact described above.

Exhibit B-8 is a statement signed by the mother of Terry Williams: "In October of 72 he informed me that I would be a grandmother again. . . he also told a friend at that time. Her name is Mrs. Wanda Coats." (See also Exhibit 18).

Exhibit 19 is a joint statement of both parents of Terry Williams, stating that Terry Williams was the father of Terron Hayes. B-9 contained court papers signed in 1976 by Terry Williams parents, avering the same fact. Similarly, Exhibit 14 is a claim by the claimant that a cousin, Darryl Freelon was also told by Terry Williams that he was the father. However, there is no statement in the file from Mr. Freelon.

The hospital record, Exhibit B-13, dated June 4, 1973 shows the onset of pregnancy "August 1972" and under the name of the father said "single". This record

listed the date the baby was due to be born as "last May".

Of course, if the claimant's sister, Danese Williams, is correct in Exhibit 22, that Terry Williams and the claimant were "going together from August 21" and if claimant is correct that the two did not start having sex until about three weeks after they met, it would have been impossible for the baby to have been conceived in August 1972, at least conceived insofar as the wage earner was concerned.

The claimant testified that when she applied for a birth certificate, Exhibit 11, she listed the deceased as the father, but that in accordance with standard practice where there was no marriage, the official refused to place the decedent's name on the certificate.

The claimant also alleged that pictures in Exhibit B-11 show a striking resemblance between the 6th grade picture of the decedent, and Terron Hayes, however this alleged resemblance is not apparent to the undersigned.

Finally, the claimant relies on the facts that her blood type is B positive, the decedents was A positive, and Terron Hayes blood type is AB positive. Medical advisor, Dr. Daly, Exhibit B-17, stated that this combination does not exclude paternity, it is entirely possible for the decedent to have fathered Terron Hayes; but it is not possible to determine parentage on that basis because approximately three out of ten black males could have the proper genes to have fathered and AB+ child with a mother who is B+.

In sum, there is evidence which tends to show that the decedent is the father of Terron: 1. The child's name is Terron Lamont, the decedent's was Terry Lamont; 2. The decedent's parents have repeatedly conducted themselves in a manner showing their belief that the decedent is the father; 3. The blood types are consistent with the alleged parentage; 4. The claimant has declared that she had no other sexual contact, had sexual contact with the decedent, and "knows" that he was the father.

Conversely, there is evidence which tends to show that the decedent is not the father of Terron: 1. The time table comes close to ruling out sexual contact with decedent during the crucial month of August 1972 when in all liklehood Terron Hayes was conceived; 2. The deceased was never unequivocally informed that he was

the father, and others to whom he allegedly declared his parentage, have not made statements supportive of these claims; 3. The blood types are consistent with other types of parentage; 4. There are serious conflicts in the evidence on important details; a the claimant's sister stated that sexual contacts occurred at her house, whereas the claimant placed them initially at a friend's home, Wanda Stapleton Coats-and there is no statement from Wanda Stapleton; b. The claimant initially claimed that the decedent gave her money for two doctor bills, whereas at the hearing she said that the decedent sent $10.00 through (she believed) Wanda Stapleton, and that she was not charged in fact for either visit.

It is accordingly found, that while there is evidence tending to show parternity, it is not clear and convincing

evidence thereof. Therefore, the claimant has not proved that the wage earner was the father under the law of the State of Missouri which requires that the evidence be clear and convincing. Nor has the claimant proved that the child meets Section 216(h)(3)(c) of the Act, since she has not proven any of the requisite facts relevant thereto.

FINDINGS

After careful consideration of the entire record, the Administrative Law Judge makes the following findings:

1. Terron Hayes is not the "child" of the wage earner under Missouri State law as required by Section 216(h)(2)(A) of the Social Security Act.

2. Terron Hayes is not the "child" of the wage earner pursuant to Section 216(h)(2)(B) of the Social Security Act as his mother and the wage earner never went through a marriage ceremony.

3. Terron Hayes is not the "child" of the wage earner pursuant to Section 216(h)(3)(c) of the Social Security Act as the evidence of record does not establish that the wage earner was ever decreed by a court to be his father, was ever ordered by a court to contribute to his support, or ever acknowledged him in writing. Furthermore, the evidence of record does not establish that the wage earner was his biological father or that the wage earner was either living with him or

contributing to his support at the time of his death.

DECISION

It is the decision of the Administrative Law Judge that Terron Hayes is not entitled to child's insurance benefits on the record of the wage earner for which application was filed on Terron Hayes' behalf on November 22, 1976.

/s/ Arthur G. Lanker
Arthur G. Lanker
Administrative Law Judge

June 17, 1983
Date

STATUTORY PROVISIONS

42 U.S.C. §402(d)(1)(C)(ii):

§402. Old-age and survivors insurance benefit payments

. . .

(d) Child's insurance benefits

(1) Every child (as defined in section 416(e) of this title) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual, if such child--

. . .

(C) was dependent upon such individual--

(i) if such individual is living, at the time such application was filed,

(ii) if such individual has died, at the time of such death, or

(iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,

shall be entitled to a child's insurance benefit for each month, beginning with--

(i) in the case of a child (as so defined) of such an individual who has died, the first month in which such child meets the criteria specified in subparagraphs (A), (B), and (C), or

(ii) in the case of a child (as so defined) of an individual entitled to an old-age insurance benefit or to a disability insurance benefit, the first month throughout which such child is a child (as so defined) and meets the criteria specified in paragraphs (B) and (C) (if in such month he meets the criteria specified in paragraph (A)),

whichever is earlier, and ending with the month preceding whichever of the following first occurs--

(D) the month in which such child dies or marries,

(E) the month in which such child attains the age of 18, but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time elementary or secondary school student during any part of such month,

(F) if such child was not under a disability (as so defined) at the time he attained the age of 18, the earlier of--

(i) the first month during no part of which he is a full-time elementary or secondary school student, or

(ii) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month; or

. . .

42 U.S.C. §405(a) and (g)

§405. Evidence, procedure, and certification for payments

(a) Rules and regulations; procedures

The Secretary shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this subchapter, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

. . .

(g) Judicial review

Any individual, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount of controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Secretary may allow. Such action shall be brought in the district court of the United States for a judicial district in which the plaintiff resides or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia. As part of his answer the Secretary shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing. The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Secretary or a decision is rendered under subsection (b) of this section which is adverse to an individual who

was a party to the hearing before the Secretary, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) of this section, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court may, on motion of the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the Secretary, and it may at any time order additional evidence to be taken before the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding; and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive

notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

. . .

42 U.S.C. §416(h)(2)(A)

§416. Additional definitions

For the purposes of this subchapter--

. . .

(h) Determination of family status

. . .

(2)(A) In determining whether an applicant is the child or parent of a fully or currently insured individual for purposes of this subchapter, the Secretary shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual is domiciled at the time such applicant files application, or, if such insured individual is dead, by the courts of the State in which he was domiciled at the time of his death, or, if such insured individual is or was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking intestate personal property as a child or parent shall be deemed such.

. . .

(3) An applicant who is the son or daughter of a fully or currently insured individual, but who is not (and is not deemed to be) the child of such insured individual under paragraph (2) of this subsection, shall nevertheless be deemed to be the child of such insured individual if:

. . .

(C) in the case of a deceased individual--

(i) such insured individual--

(I) has acknowledged in writing that the applicant is his or her son or daughter,

(II) had been decreed by a court to be the mother or father of the applicant, or

(III) had been ordered by a court to contribute to the support of the applicant because the applicant was his or her son or daughter,

and such acknowledgement, court decree, or court order was made before the death of such insured individual, or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to have been the mother or father of the applicant, and such insured

individual was living with or contributing to the support of the applicant at the time such insured individual died.

. . .

Missouri Annotated Statutes, §474.060 (Vernon)

474.060. Determination of relationship of parent and child--adopted person is child of adopting parent, exception--illegitimate child, relationship determined

1. If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person, an adopted person is the child of an adopting parent and not of the natural parents, except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and such natural parent.

2. In cases not covered by subsection 1 herein, a person born out of wedlock is a child of the mother. That person is also a child of the father, if either of the following occur:

(1) The natural parents participated in a marriage ceremony before or after the

birth of the child, even though the attempted marriage is void;

(2) The paternity is established by an adjudication before the death of the father, or is established thereafter by clear and convincing proof, except that the paternity established under this subdivision (2) is ineffective to qualify the father or his kindred to inherit from or through the child, unless the father has openly treated the child as his, and has not refused to support the child.

(Amended by L. 1980, pp. 480, 637, § 1, eff. Jan. 1, 1981; L. 1981, p. 622, § 1, eff. June 10, 1981.)